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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,828	07/23/2003	Eric Beishline	PCB107	8955
32047	7590	11/21/2005	EXAMINER	
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC			DUNN, DAVID R	
55 SOUTH COMMERCIAL STREET			ART UNIT	
MANCHESTER, NH 03101			PAPER NUMBER	

3616

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/625,828	BEISHLIN ET AL.	
	Examiner	Art Unit	
	David Dunn	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/30/04, 10/5/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statements filed January 30, 2004; October 5, 2004; and March 14, 2005 are acknowledged. See enclosed IDS forms.

### ***Election/Restrictions***

2. Applicant's election without traverse of Group I in the reply filed on August 25, 2005 is acknowledged.

Applicant has canceled claims 40-43; therefore claims 1-39 (corresponding to elected Group I) are pending.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the driven element being "responsive to said plunger" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant does not describe how the "drive assembly" (or "plunger") drives the "actuator driven element" (or "stabilizer bar"). There is no relation shown or described between these two elements. For example, the "plunger" is shown in Figure 3, however it is not shown how the plunger drives the stabilizer bar.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3616

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 31 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites "said element" in line 5. It is unclear what this refers to as two elements are previously recited ("a driven element" and "a stored energy element").

### *Double Patenting*

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claim 33 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 48 of U.S. Patent No. 10/770,430. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 48 (dependent from claim 47) claims a stabilizer bar, a power source, an actuator, a plunger, and a

Art Unit: 3616

stored energy element to drive the plunger upon detection of a failure condition ("interruption of power").

*Claim Rejections - 35 USC § 102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 2, 5-13, 27-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Pascarella (US 5,505,480).

Pascarella discloses a failsafe actuator for returning an actuator driven element to a failsafe position in case of a failure condition, said actuator comprising: a drive assembly (15) configured to drive said actuator driven element (14), the drive assembly comprising a plunger (84) having at least a first plunger position, said actuator driven element responsive to the plunger such that said actuator driven element is in said failsafe position when the plunger is in the first plunger position; and a stored energy element (106) configured to drive the plunger to the first plunger position, and hence drive the actuator driven element to said failsafe position, upon detection of the failure condition (see column 4, lines 45-55). The energy element is a torsion spring (a coil spring is a type of torsion spring). An electromechanical mechanism (solenoid 100) is configured to maintain the stored energy element in a preloaded condition.

12. Claims 1-6, 8-13, 15-17, 21, and 27-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Rauch et al. (US 6,622,984).

Rauch et al. disclose a failsafe actuator for returning an actuator driven element to a failsafe position in case of a failure condition, said actuator comprising: a drive assembly (90) configured to drive said actuator driven element (34), the drive assembly comprising a plunger (96) having at least a first plunger position, said actuator driven element responsive to the plunger such that said actuator driven element is in said failsafe position when the plunger is in the first plunger position; and a stored energy element (spring 98) configured to drive the plunger to the first plunger position, and hence drive the actuator driven element to said failsafe position, upon detection of the failure condition. The drive assembly further includes an electric motor (50) and a gear train (40). The actuator further comprises a sensor (28)

13. Claims 1-6, 8-13, 15, 16, and 27-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Hudson et al. (US 5,988,319).

Hudson et al. disclose a failsafe actuator for returning an actuator driven element to a failsafe position in case of a failure condition, said actuator comprising: a drive assembly (54) configured to drive said actuator driven element (35), the drive assembly comprising a plunger (20) having at least a first plunger position, said actuator driven element responsive to the plunger such that said actuator driven element is in said failsafe position when the plunger is in the first plunger position; and a stored energy element (spring 54) configured to drive the plunger to the first plunger position, and hence drive the actuator driven element to said failsafe position, upon detection of the failure condition. The loss of power is sense by device 36. The drive assembly further includes an electric motor (12) and a gear train (46).

Art Unit: 3616

14. Claims 1-6, 8-16, and 27-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuhr (US 5,182,498).

Stuhr discloses a failsafe actuator for returning an actuator driven element to a failsafe position in case of a failure condition, said actuator comprising: a drive assembly (41) configured to drive said actuator driven element (36), the drive assembly comprising a plunger (41) having at least a first plunger position, said actuator driven element responsive to the plunger such that said actuator driven element is in said failsafe position when the plunger is in the first plunger position; and a stored energy element (spring 45) configured to drive the plunger to the first plunger position, and hence drive the actuator driven element to said failsafe position, upon detection of the failure condition (see column 7, lines 15-31). The actuator includes a lost motion element (clutch 68); a motor (73) and gear train (66).

*Claim Rejections - 35 USC § 103*

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 18-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rauch et al. in view of Schick et al. (US 6,467,748).

Rauch et al. is discussed above and fails to show a Hall effect sensor.

Schick et al. teaches a solenoid operated control valve with a power failure shut off (see Abstract) comprising a Hall effect sensor (see column 2, lines 35-40).



It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rauch et al. with the teachings of Schick et al. in order to provide an improved sensor assembly.

*Allowable Subject Matter*

17. Claims 26, 35 and 36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

18. Claims 37-39 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> paragraph, set forth in this Office action.

*Conclusion*

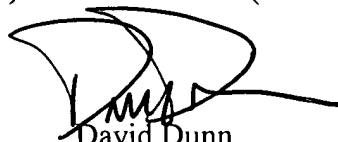
19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fangio teaches a backup power source of interest. Kompeliën et al. teaches a backup power drive. Matsuda et al. shows a fail-safe control system.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Dunn whose telephone number is 571-272-6670. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'David Dunn', is positioned above the printed name.

David Dunn  
Primary Examiner  
Art Unit 3616